**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO. 76 OF 2006**

Deepak Raghunath Mane ]
Age 45 years,Prisoner No.C-8838 ]
Yerwada Central Prison, Yerwada ]
Pune 411 006, having permanent ]
address at 1st floor, Room No.40]
Dr. Shivram Chawl, Dattaram Lad ]
Marg, Kalachowki, Mumbai 400033 ]..Petitioner

versus

1. State of Maharashtra ]
through Secretary, Home ]
Department, Mantralaya, ]
Mumbai 400 032 ]
2. The Superintendent, ]
Yerwada Central Prison, Yerwada ]
Pune 411 006 ]..Respondents

Mr. Madhav J. Jamdar for the Petitioner.

Mrs. A. S. Pai, APP for the Respondents - State.

**CORAM : D. G. DESHPANDE, &**
**S. A. BOBDE,JJ.**

**DATE : 28TH JUNE, 2006**

**ORAL ORDER :**

1. Heard Mr. Jamdar, learned Advocate for the Petitioner and the learned APP for the State. Rule, returnable forthwith, by consent.

2. The petitioner has been convicted under

Section 302 and sentenced to suffer imprisonment for life. He is also convicted under Section 392 r/w Section 397 and sentenced to R.I. for 7 years and fine. The date of conviction is 27.2.1996. He is in custody, as noted by the trial court in its judgment, from the date of his arrest i.e. 10.8.1990. According to the Petitioner even though he is convicted for life, he falls under the category 3(a) or 3(b) and therefore sentence that he is required to undergo is either 22 years or 24 years, and, therefore, the petitioner be directed to be released on completion of 22 years of imprisonment. He has made similar representation to the Government of Maharashtra. Order came to be passed vide Exhibit "C" by the Home Department, Manatralya, on 25.2.2005, wherein he prayed that he should be released under the "14 year Rule". The Government found that this prisoner fell in Category 5(a) of the guidelines and remitted that portion of life, which is in excess of 26 years of total imprisonment including all remissions subject to the completion of actual imprisonment of 14 years, subject to condition of the prisoner’s good behaviour and condition in prison till the time of his release, if the said condition is accepted by

the said prisoner.

3. The aforesaid order, therefore clearly state that the minimum sentence the prisoner will have to go is 26 years as his case falls under category 5(a) of the guidelines.

4. It was in this background that Mr. Jamdar contended that the case of the petitioner falls not under category 5(a) but under category 3(a) or 3(b) and his sentence has to be confined either to 22 years or 24 years and not 26 years.

5. Guideline 3 reads as under:

**MURDERS FOR OTHER REASONS :**

a) Where a murder is committed in the course of quarrel without premeditation in an individual capacity and where the person has no previous criminal history.
.. 22 years

b) As at (a) above but with premeditation or by a gang.
..24 years

c) Murders resulting from trade union activities and business rivalry.
..26 years

d) Murder committed with premeditation and with exceptional violence or

perversity.

..26 years

Guide-line 5 reads as under:

**MURDERS BY PROFESSIONAL CRIMINALS**

a) Murders committed by dacoits and robbers in the act of committing dacoities and robberies.

b) Murders committed by gangsters, contract killers, smugglers, drug traffickers, racketers, bootleggers, gamblers, flesh traders and those indulging in other form of organised crime in furtherance of their criminal activities.

(We have taken these guide-lines from the Annexure to the petition. There is no dispute by the learned APP about the correctness of these guidelines or this annexure).

6. Mr. Jamdar, contended that the offence was committed without premeditation and in individual capacity, and, accused has absolutely no criminal history. Therefore, the offence comes under guideline 3(a), and, in any case, it being without premeditation, case falls under guideline 3(b). It appears from the categorisation or guidelines relied upon by the petitioner, and, also the learned APP that nature of the offence or the manner in which it

is committed, is the basis for determining the period of sentence the convict has to undergo. According to the Home Ministry's Order, offence comes under category 5(a), but Mr. Jamdar contended that the title or heading of guidelines 5 is **"Murders by Professional Criminals".** He contended that there was nothing on record either during trial or even with the Home Department to show or hold that the petitioner is a professional criminal. Therefore, according to Mr. Jamdar guideline No. 5, cannot apply to the petitioner. He contended that guideline No.3 is applicable in the case of the petitioner i.e. either 3(a) or 3(b).

7. In order to properly appreciate these arguments, we, will have to go the facts of the case as revealed by the judgment of conviction, copy of which is annexed with the petition.

8. The first informant Smt. Sumitra Raghunath Surve (P.W. 1) was running a boarding house at her house at Room No. 85, Vikrant Sadan, Sane Guruji Marg, Chinchpokali, Bombay 400 012. That room was situate on the 2nd floor. The incident of murder took place on 10.8.1990. Two years prior thereto

the accused was a boarder at the household boarding of Smt. Sumitra Surve. He was well acquainted with the family members of P.W. 1.

9. Shankar Hari Mane was the father of P.W. 1 aged about 80 years. On 10.8.1990 when P.W. 1 and her daughters and son left home for their respective schools, and, P.W. 1 also left for her job, father Shankar Hari Mane was only in the house. At that time the accused entered the room No. 85, assaulted the old man with wooden sticks and soda water bottle and strangulated him with one towel and then opened the cupboard lying in the room and stolen the gold ornaments and some cash from the locker and instead of leaving the room from the front, escaped from the rear window. The door of the house was latched from inside.

10. According to the evidence of doctor, who performed autopsy, the death was due to strangulation with throtteling with smothering with head injury and with alcohol consumption.

11. Admittedly, this was a pre-planned robbery. Guide-lines No. 3(a) would not therefore be

applicable because it says that where a murder is committed in the course of quarrel without premeditation.

12. Mr. Jamdar, contended that since the accused is not a professional criminal, the guideline 5 would not be applicable and guideline 3(a) or (b) would be applicable.

13. We, are not convinced by this argument. It is true that title of guideline No.5 is "**Murders by Professional Criminals**" but guideline 5(a) state that "**Murders committed by dacoits and robbers in the act of committing dacoities and robberies".** This is admittedly case of robbery and accused has committed murder in the act of committing robbery. In this view of the matter, the decision of the State Government to apply guideline No.5(a), cannot be faulted with. Therefore, Petition fails. Rule discharged accordingly.

**(D.G. DESHPANDE, J. )**

**( S.A. BOBDE, J.)**